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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,956	10/15/2003	Tamir Massad	U 014854-9	7959
140 7590 04/01/2009 LADAS & PARRY LLP 26 WEST 61ST STREET NEW YORK, NY 10023				
EXAMINER				
JANG, CHRISTIAN YONGKYUN				
ART UNIT		PAPER NUMBER		
3735				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/685,956

Applicant(s)

MASSAD, TAMIR

Examiner

CHRISTIAN Y. JANG

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 189, 191-194 and 288 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 189, 191-194 and 288 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-083)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is responsive to amendments filed on December 23rd, 2008. Claims 189, 191-194 and 288 are pending in the instant application.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 189, 191-194, and 288 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. As to claims 189 and 288, the claim recites "a distance between the base electrode and the deformable electrode varies along a length of the deformable electrode" when "no force is applied to the deformable electrode." It is unclear what point(s) of reference is used on the base electrode, whether the "distance" is calculated by determining the distance between a fixed point on the base electrode along the length of the deformable electrode, or the distance between the two points of a base and deformable electrode along a plane that is perpendicular to the insulating layer that is situated between the two types of electrodes. While the latter seems to be the case, the claim itself is not worded clearly enough to particularly point out and distinctly claim the subject matter. For purposes of examination, the latter interpretation will be used.

6. As to claims 189 and 288, the claim recites something that "is fixed by the apparatus." While it seems that the applicant is intending to state that the closest possible distance is fixed by the structure of the apparatus, the way the claim language stands is indefinite as it fails to particularly point this out.
7. Claims 191-194 are dependent on claim 189.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 189, 192, 194, and 288 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoshino (USP #4,672,849).
10. As to claims 189 and 288, Hoshino teaches an apparatus comprising a housing (Fig. 1), a base electrode (1), a deformable electrode (13) mechanically coupled to the base electrode and the housing, the base electrode and the deformable electrode defining a capacitor having capacitance, such that the capacitance is varied responsive to deformation of the deformable electrode (col. 4 lines 38-65), wherein when no force is applied to the deformable electrode and the distance between the base and deformable electrode varies along a length of the deformable electrode, the two electrodes converging to a closest possible distance from each other, which is fixed by the apparatus (Fig. 1).

11. As to claim 192, Hoshino teaches a member mechanically coupled to the deformable electrode such that movement of the member deforms the deformable electrode and varies the capacitance (13).
12. As to claim 194, Hoshino teaches the member is adapted to be in physical contact with the deformable electrode (13).

Claim Rejections - 35 USC § 103

13. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
14. Claims 191 rejected under 35 U.S.C. 103(a) as being unpatentable over Hoshino (USP #4,672,849) in view of Hardway, Jr. et al. (USP #4,033,332).
15. As to claim 191, Hoshino fails to teach that the electrode is adapted to be coupled to a user, so as to deform responsive to respiration of the user. However, Hardway teaches a mechanical deformation measurement device to deform responsive to the respiration of the user. As such, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device for measuring mechanical deformation as taught by Hoshino as taught by Hardway in order to monitor respiration in a user.
16. Claims 193 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoshino (USP #4,672,849) and Hardway, Jr. et al. (USP #4,033,332), and further in view of Sciarra (USP #5,131,399).

17. As to claim 193, the combined teachings of Hoshino and Hardway fail to teach a belt adapted to be placed around a torso of a user. Sciarra teaches a belt (22) for monitoring user respiration movement (Abs). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device for measuring mechanical deformation as taught by Hoshino as modified with Hardway to include a belt as taught by Sciarra in order to enable the measurement of respiratory movement in various user positions.

Response to Arguments

18. Applicant's arguments with respect to claims 189, 191-194, and 288 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTIAN Y. JANG whose telephone number is (571)270-3820. The examiner can normally be reached on Mon. - Fri. (8AM-5PM) EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. Y. J./
Examiner, Art Unit 3735
3/11/09

/Charles A. Marmor, II/
Supervisory Patent Examiner
Art Unit 3735

